S.B. CIVIL WRIT PETITION NO. 6556/2005

Smt. Neetu Choudhary Vs. State of Raj. & Ors.

DATE OF ORDER :: 01.12.2006

HON'BLE MR. GOVIND MATHUR, J.

Mr. Yashpal Khileree, for the petitioner/s.
Mr. B.L. Tiwari, Dy. Govt. Advocate.

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The petitioner after acquiring the qualification of Senior Higher Secondary School Certificate,, undergone training for Diploma in General Nursing at Mahatma Gandhi Hospital, Jodhpur in the year 1999. While admitting the petitioner in Diploma Course an undertaking was sought by the State Government to serve it for a period of five years after completion of Diploma in Nursing. The petitioner was accordingly employed as a Nurse Gr.II on urgent temporary basis under an order dated 25.1.2000.

The respondents by notification dated 19.7.2005 invited applications from the persons eligible to undergo Mid-wifery Course, however, that was kept confined for the persons who were not in government service and have acquired General Nursing Diploma in accordance with the old syllabi in the session of 2001-2002. The grievance of the petitioner is that she is in government service as a consequent to an undertaking given by her at the time of admission in Diploma in Nursing Course and as such denial for admission in Mid-wifery Training course shall be arbitrary. Hence, this petition

for writ is preferred.

This Court while issuing notice to show cause to the respondents under an order dated 10.11.2005 permitted the petitioner to undergo the Mid-wifery Training Course subject to decision of this petition for writ. Accordingly, the petitioner was admitted in Mid-wifery Training Course and was also allowed to appear in final examination of the course concerned. By an order dated 14.11.2006 this Court directed the respondents to make the result of the petitioner available for perusal of the Court. Accordingly, the same is shown to the Court today. From perusal of the result it appears that the petitioner has passed the course concerned and secured 173 marks.

Precisely, the question now before the Court is that after acquiring the requisite training and qualifying the course concerned whether this Court should examine the merits of the matter?

It is contended by learned counsel for the respondents that the admission to the petitioner in Mid-wifery Course was subject to final decision of this petition for writ, therefore, if the petitioner is not found eligible to be admitted in the course concerned on merits then the training and qualification acquired is required to be cancelled.

On the other hand it is asserted by learned counsel for the petitioner that the petitioner has successfully completed the training course, and therefore, now only course available is

to award the certificate of such training to the petitioner.

Heard counsel for the parties.

It is true that the petitioner was admitted to Mid-wifery Course under an interim direction of this Court and she has completed the entire Course and also qualified the same.

The acquiring of training is a process of learning and the petitioner has successfully learnt the same. The training imparted and acquired by the petitioner is an act that relates to the intellect and such skill or knowledge once acquired cannot be vanished or undone. As such, the process of learning and acquisition of knowledge that has been completed cannot be freezed or undone even if it is found that the petitioner was not having a right to be considered for admission to the Course concerned being in employment of the Government of Rajasthan. It is pertinent to note here that the petitioner possess the qualification requisite to be admitted in the Course of Mid-wifery, therefore, it is not the case that she lack basic eligibility of qualification to undergo the Mid-wifery course.

The Hon'ble Supreme Court in the similar circumstances in the case of Smita Johnbhai Master and Ors. Vs. State of Gujarat and Ors. (AIR 1981 SC 1633) held as under:-

"4. Undoubtedly a grievance is being

made now that those who benefit by the Court's interim order should not be allowed to take any advantage of it if the petition in which interim order was made is liable to be rejected. Another grievance equally meritorious is that those who secured admission which is found to be unjustified but continued to receive training under the interim orders of the Court, would enjoy an unfair advantage over those who failed to get admission because of the invalid admissions of the first mentioned persons. Conversely if interim arrangement is not directed what an oppressive outcome it would be if the challenge initially made in the petition to the Court turns out to be effective and valid. These are some unavoidable consequences of the system which howsoever on may disapprove, cannot be wished away. Even if we do not grant any relief to the petitioners whose petition is being dismissed, those who could not secure admission would not be better off, because their loss of one year cannot be compensated or restored by any process known to law. Clock cannot be put back howsoever one may ardently desire.

5. Therefore, with a view to mitigating the harshness of law blended by the fairness of equity, we direct that all those who secured admissions under the aforementioned five orders of the Director of Education and have completed first year course and have also appeared at the examination held at the end of first academic year should be treated as admitted for the limited period of first year."

In view of the law laid down as above by Hon'ble Apex Court the appropriate course is to validate the admission of the petitioner in the course concerned.

In view of whatever discussed above I am of the view that as the petitioner has already acquired and qualified the Mid-wifery Course, therefore, there is no need now to enter into the merits of the case.

Accordingly, this petition for writ is allowed. The respondents are directed to declare the result of the petitioner and award her the certificate concerned. No order as to cost.

(GOVIND MATHUR),

J.

J.Goyal